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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/629,128	07/29/2003	Joseph M. Asher	03-1084	5903

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ROPES & GRAY LLP
PATENT DOCKETING 39/361
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NEW YORK, NY 10036-8704

EXAMINER

HAQ, NAEEM U

ART UNIT	PAPER NUMBER
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3625

MAIL DATE	DELIVERY MODE
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01/03/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/629,128

Applicant(s)

ASHER ET AL.

Examiner

Naeem Haq

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 October 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-100 is/are pending in the application.
- 4a) Of the above claim(s) 2-18, 23-33, 48-71, 77-85 and 99 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 19-22, 34-47, 72-76, 86-98, and 100 is/are rejected.
- 7) ☒ Claim(s) 36, 37, 88 and 89 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date. _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on October 4, 2007 has been entered.

Response to Amendment

Applicant's amendments filed on October 4, 2007 are sufficient to overcome the rejection of claims 36, 37, 39, 88, 89, and 91 under 35 U.S.C. 112, second paragraph. This rejection is withdrawn.

Allowable Subject Matter

Claims 36, 37, 88, and 89 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1, 19-22, 34, 35, 47, 73, 74, 75, 76, 86, 87, and 100 are rejected under 35 U.S.C. 103(a) as being unpatentable over Melkomian et al. (US 2002/0128952 A1)(“Melk”) in view of Gottsman et al. (US 6,134,548)(“Gottsman”).

Referring to claims 1, 35, 46, and 100: Melk teaches an apparatus for implementing an automated auction process, comprising:

- a memory operable to: store data regarding a plurality of animated characters (paragraphs [0063], [0152], claim 7);
- a processor communicatively coupled to a memory and to plurality of workstations, wherein a first workstation is associated with a first user and the processor is operable to:
 - receive a first bid for an item from a workstation associated with a user (paragraph [0064]);
 - cause the first workstation to display a first animated character as an animated auctioneer that announces the first bid for the item (paragraphs [0063], [0070], [0155], and Abstract);
 - receive a second bid for the item from a workstation associated with another user (Abstract; paragraphs [0063] and [0064]).

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Melk does not explicitly teach determine that the second bid is a current highest bid for the item and cause the animated auctioneer to announce the second bid for the item based at least in part on determining that the second bid is the current highest bid for the item. However, Melk teaches that a broker can view the bids/offers in the trading pit and can then report them to the client (paragraph [0071]). Therefore it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to determine that a second bid is a current highest bid for the item and cause the animated auctioneer to announce the second bid for the item based at least in part on determining that the second bid is the current highest bid for the item. One of ordinary skill in the art would have been motivated to do so in order to keep the client informed about the current status of the price of the item. Melk also does not teach storing a profile associated with a first user, or determining a first animated character based at least in part on the profile associated with the first user. However, Gottsman teaches displaying an agent (i.e. animated character) to a user based on a user's profile (col. 34, lines 28-43; col. 39, lines 16-21). Therefore it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to incorporate the teachings of Gottsman into the invention of Melk. One of ordinary skill in the art would have been motivated to do so in order to personalize the animated character.

Referring to claim 19: The cited prior art teaches all the limitations of claim 1 as noted above. Furthermore, Gottsman teaches determining a second animated character, from a plurality of animated characters, based at least in part on the profile associated with the first user and displaying the character as an animated spotter

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operable to solicit a request from the first user (Figure 22, "2200"; col. 34, lines 28-66; col. 39, lines 16-35). Therefore it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to incorporate the teachings of Gottsman into the invention of Melk. One of ordinary skill in the art would have been motivated to do so in order to allow a user to personalize the animated character for different environments.

Referring to claim 21: The cited prior art teaches all the limitations of claim 1 as noted above. Furthermore, Melk teaches that the animated character seeks confirmation from the first user for a bid placed by the first user (paragraphs [0068] and [0136]).

Referring to claim 22: The cited prior art teaches all the limitations of claim 1 as noted above. Furthermore, Melk teaches that the animated character is adapted to announce to the user the bid placed by the first user (paragraph [0070]).

Referring to claim 34: The cited prior art teaches all the limitations of claim 1 as noted above. The cited prior art does not teach that the animated character represents a celebrity. However, the Examiner notes that this limitation is not functionally or structurally involved in the elements of the recited system. Therefore this limitation is deemed to be nonfunctional descriptive material. The elements of apparatus would be the same regardless of what the animated character represented. The difference between the Applicants' invention and the prior art is merely subjective. Thus this nonfunctional descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ

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401, 404 (Fed. Cir. 1983); In re Lowry, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994)

also see MPEP 2106. Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to have the animated character (i.e. avatar) of the cited prior art represent any type personality (e.g. a celebrity) because such representation does not functionally structurally relate to the elements of the claimed apparatus and because the subjective interpretation of information does not patentably distinguish the claimed invention.

Referring to claim 73: Claim 73 is rejected under the same rationale as set forth above in claim 19.

Referring to claim 75: Claim 75 is rejected under the same rationale as set forth above in claim 21.

Referring to claim 76: Claim 76 is rejected under the same rationale as set forth above in claim 22.

Referring to claim 86: Claim 86 is rejected under the same rationale as set forth above in claim 34.

Referring to claim 87: Claim 87 is rejected under the same rationale as set forth above in claim 35.

Referring to claims 20, 47, and 74: Claims 20, 47, and 74 are rejected under the same rationale as set forth above in claim 1.

Response to Arguments

Applicant's arguments with respect to the rejection of claim 1 have been considered but are moot in view of the new ground(s) of rejection.

Applicant's arguments with respect to the rejection of claim 72 under 35 U.S.C. 112, first paragraph have been fully considered and are persuasive. This rejection is withdrawn.

Conclusion


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Naeem Haq whose telephone number is (571)-272-6758. The examiner can normally be reached on M-F 8:00am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffrey A. Smith can be reached on (571)-272-6763. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

December 21, 2007



NAEEM HAQ
PRIMARY EXAMINER